

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN SENATE MAY 11, 2009

AMENDED IN ASSEMBLY MARCH 25, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 457**

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**Introduced by Assembly Member Monning  
(Coauthor: Assembly Member Emmerson)**

February 24, 2009

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An act to amend Sections 3084 and 3146 of the Civil Code, relating to liens.

LEGISLATIVE COUNSEL'S DIGEST

AB 457, as amended, Monning. Liens.

The California Constitution gives workers the right to a mechanic's lien for the value of labor and materials provided for the improvement of real property, and authorizes the Legislature to provide for the speedy and efficient enforcement of these liens. Existing law defines claim of lien in this regard, requiring it to contain specified information. Existing law provides that a lien claimant, after filing of the complaint to enforce the lien in the proper court, may record in the office of the county recorder where the property is located a notice of pending proceedings, and from the time of the recording a purchaser or encumbrancer of the property is deemed to have constructive notice of the pendency of the action.

This bill would provide that the definition of "claim of lien" is also the definition of "mechanic's lien" and would include within this definition a Notice of Mechanic's Lien, which would contain specified information regarding the legal effect of the lien. The bill would require

the mechanic's lien and the Notice of Mechanic's Lien to be served, as specified, on the owner or reputed owner of the property, or on the construction lender or the original contractor if those parties cannot be served. The bill would require a proof of service affidavit to be completed ~~in a specified form~~ and signed by the person serving the Notice of Mechanic's Lien, and ~~this form~~ *it* would be included as part of the mechanic's lien or claim of lien. ~~The form would be signed under penalty of perjury. By applying the crime of perjury to this form, the bill would create a state-mandated local program.~~ The bill would provide that a failure to serve the mechanic's lien, including the Notice of Mechanic's Lien, as required, would cause the mechanic's lien to be unenforceable as a matter of law.

The bill would also revise the permissive provisions regarding the recording of the complaint to enforce the lien, as described above, to make them mandatory. The bill would also make correctional, style, and conforming changes.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.  
State-mandated local program: ~~yes~~-no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 3084 of the Civil Code is amended to
- 2 read:
- 3 3084. (a) "Claim of lien" or "mechanic's lien" means a written
- 4 statement, signed and verified by the claimant or by the claimant's
- 5 agent, containing all of the following:
- 6 (1) A statement of the claimant's demand after deducting all
- 7 just credits and offsets.
- 8 (2) The name of the owner or reputed owner, if known.
- 9 (3) A general statement of the kind of labor, services, equipment,
- 10 or materials furnished by the claimant.
- 11 (4) The name of the person by whom the claimant was employed
- 12 or to whom the claimant furnished the labor, services, equipment,
- 13 or materials.
- 14 (5) A description of the site sufficient for identification.

1 ~~(6) An affidavit completed and signed by the person serving~~  
2 ~~the Notice of Mechanic's Lien pursuant to paragraph (7) in the~~  
3 ~~following form:~~

4  
5 PROOF OF SERVICE AFFIDAVIT

6 ~~I, (insert name of person making service), declare that I served a copy of the~~  
7 ~~mechanic's lien by registered mail, certified mail, or first-class mail, evidenced~~  
8 ~~by a certificate of mailing, postage prepaid, addressed to the following owner~~  
9 ~~or reputed owner of the property (insert name and title of person served) at the~~  
10 ~~following address \_\_\_\_\_,~~  
11 ~~on this date: \_\_\_\_\_.~~

12  
13 ~~I declare under penalty of perjury under the laws of the State of California~~  
14 ~~that the foregoing is true and correct.~~

15  
16 ~~Signed at \_\_\_\_\_, on this date \_\_\_\_\_.~~  
17 ~~\_\_\_\_\_~~  
18 ~~(Signature of person making service)~~

19  
20 *(6) A proof of service affidavit completed and signed by the*  
21 *person serving the Notice of Mechanic's Lien pursuant to*  
22 *subdivision (c). A "proof of service affidavit" is an affidavit of the*  
23 *person making the service, showing the date, place, and manner*  
24 *of service and facts showing that the service was made in*  
25 *accordance with this section. The affidavit shall show the name*  
26 *and address of the person or persons upon whom a copy of the*  
27 *mechanic's lien and the Notice of Mechanic's Lien was served,*  
28 *and, if appropriate, the title or capacity in which he or she was*  
29 *served.*

30 (7) The following statement, printed in at least 10-point boldface  
31 type. The letters of the last sentence shall be printed in uppercase  
32 type, excepting the Internet Web site address of the Contractors'  
33 State License Board, which shall be printed in lowercase type:

34  
35 NOTICE OF MECHANIC'S LIEN  
36 ATTENTION!  
37

38 Upon the recording of the enclosed MECHANIC'S LIEN with  
39 the county recorder's office of the county where the property is  
40 located, your property is subject to the filing of a legal action

1 seeking a court-ordered foreclosure sale of the real property on  
2 which the lien has been recorded. That legal action must be filed  
3 with the court no later than 90 days after the date the mechanic's  
4 lien is recorded.

5 The party identified in the mechanic's lien may have provided  
6 labor or materials for improvements to your property and may not  
7 have been paid for these items. You are receiving this notice  
8 because it is a required step in filing a mechanic's lien foreclosure  
9 action against your property. The foreclosure action will seek a  
10 sale of your property in order to pay for unpaid labor, materials,  
11 or improvements provided to your property. This may affect your  
12 ability to borrow against, refinance, or sell the property until the  
13 mechanic's lien is released.

14 BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU  
15 MAY WISH TO SPEAK WITH YOUR CONTRACTOR  
16 IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR  
17 MORE INFORMATION ON MECHANIC'S LIENS GO TO THE  
18 CONTRACTORS' STATE LICENSE BOARD WEB SITE AT  
19 [www.cslb.ca.gov](http://www.cslb.ca.gov).

20  
21 (b) A mechanic's lien or claim of lien in otherwise proper form,  
22 verified and containing the information required by this section  
23 shall be accepted by the recorder for recording and shall be deemed  
24 duly recorded without acknowledgment.

25 (c) (1) The mechanic's lien and the Notice of Mechanic's Lien  
26 described in this section shall be served *on the owner or reputed*  
27 *owner. Service shall be made* as follows:

28 (A) For an owner or reputed owner to be notified who resides  
29 in or outside this state, by registered mail, certified mail, or  
30 first-class mail, evidenced by a certificate of mailing, postage  
31 prepaid, addressed to the owner or reputed owner at the owner's  
32 or reputed owner's residence or place of business address or at the  
33 address shown by the building permit on file with the authority  
34 issuing a building permit for the work, or as otherwise provided  
35 in subdivision (j) of Section 3097.

36 (B) If the owner or reputed owner cannot be served by this  
37 method, then the notice may be given by registered mail, certified  
38 mail, or first-class mail, evidenced by a certificate of mailing,

1 postage prepaid, addressed to the construction lender or to the  
2 original contractor.

3 (2) Service by registered mail, certified mail, or first-class mail,  
4 evidenced by a certificate of mailing, postage prepaid, is complete  
5 at the time of the deposit of that first-class certified or registered  
6 mail.

7 (d) Failure to serve the mechanic's lien, including the Notice  
8 of Mechanic's Lien, as prescribed by this section, shall cause the  
9 mechanic's lien to be unenforceable as a matter of law.

10 SEC. 2. Section 3146 of the Civil Code is amended to read:

11 3146. After the filing of the complaint in the proper court to  
12 foreclose on the mechanic's lien, the plaintiff shall record in the  
13 office of the county recorder of the county, or of the several  
14 counties in which the property is situated, a notice of the pendency  
15 of the proceedings, as provided in Title 4.5 (commencing with  
16 Section 405) of Part 2 of the Code of Civil Procedure on or before  
17 20 days after the filing of the mechanic's lien foreclosure action.  
18 Only from the time of recording that notice shall a purchaser or  
19 encumbrancer of the property affected thereby be deemed to have  
20 constructive notice of the pendency of the action, and in that event  
21 only of its pendency against parties designated by their real names.

22 SEC. 3. The amendments proposed by this act shall be operative  
23 on January 1, 2011.

24 ~~SEC. 4. No reimbursement is required by this act pursuant to~~  
25 ~~Section 6 of Article XIII B of the California Constitution because~~  
26 ~~the only costs that may be incurred by a local agency or school~~  
27 ~~district will be incurred because this act creates a new crime or~~  
28 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
29 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
30 ~~the Government Code, or changes the definition of a crime within~~  
31 ~~the meaning of Section 6 of Article XIII B of the California~~  
32 ~~Constitution.~~